

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Chapter 7
Case No. 04-33880 GFK

Araceli Guerrero and
Laskari Ursua-Vega,

Debtors.

NOTICE OF HEARING AND
MOTION FOR RELIEF FROM STAY

1. Capital One Auto Finance ("Movant"), a secured creditor of the Debtors herein, by its undersigned attorney, moves the Court for the relief requested below, and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion at 10:30 o'clock a.m., on October 19, 2004, before the Honorable Gregory F. Kishel, Courtroom 228-B United States Courthouse, 316 North Robert Street, St. Paul, Minnesota, or as soon thereafter as counsel may be heard.

3. Any response to this motion must be filed and delivered not later than October 14, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or filed and served by mail not later than October 7, 2004, which is seven days before the date set for the hearing (excluding Saturdays, Sundays and holidays).
UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT
MAY GRANT THE MOTION WITHOUT A HEARING.

4. This motion is filed pursuant to Bankruptcy Rule 4001 and Local Rules 9013-2 and 4001-1 and Movant requests relief from the automatic stay of 11 U.S.C. § 362(a) with respect to certain personal property subject to Movant's valid security interest.

5. This case was filed as a voluntary case under Chapter 7 of the United States Bankruptcy Code, and the case is now pending in this Court. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 1334 and 157(a), Local Rule 1070-1, Fed. R. Bankr. P. 5005 and applicable rules. This is a core proceeding.

6. Movant holds a valid, perfected security interest in a 1998 Oldsmobile, VIN No. 1G3GR62C6W4115959 (the "Vehicle").

7. Copies of Movant's Installment Sale Contract (the "Contract") and Confirmation of Lien Perfection, respectively evidencing creation and perfection of Movant's security interest, are attached hereto as Exhibits A and B and incorporated herein by reference.

8. Debtors indicated in their bankruptcy schedules their intent to surrender the Vehicle to Movant. Movant seeks relief from the automatic stay in order to take possession of the Vehicle.

9. Payments due under the terms of the Contract have not been made by the Debtors. The balance due under the Contract is \$11,890.75 as of the date of filing this case, and on information and belief, the fair market value of the Vehicle is approximately \$7,700.00. Debtors are delinquent under the terms of the Contract for the monthly payments of \$468.33 each for the months of July 2004 through August 2004 in the total amount of \$936.66, plus late charges, accruing interest, fees and costs.

10. Movant does not have, and has not been offered, adequate protection of its interest in the Vehicle. There is no equity in the Vehicle and, in view of the fact that this is a Chapter 7 liquidation proceeding, the Vehicle is not necessary to an effective reorganization.

11. The failure of the Debtors to make payments or otherwise provide Movant with adequate protection of its interest in the Vehicle constitutes cause, within the meaning of 11 U.S.C. § 362(d)(1), entitling Movant to relief from the stay.

12. If testimony is necessary as to any facts relevant to this motion, Marnie Baker of Movant, P.O. Box 260848, Plano, Texas 75026, will testify on behalf of Movant.

WHEREFORE, Movant, respectfully moves the Court for an order modifying the automatic stay of section 362(a) of the Bankruptcy Code and authorizing Movant to foreclose its security interest in the Vehicle and for such other relief as may be just and equitable.

Date: September 27, 2004.

FOLEY & MANSFIELD, P.L.L.P.

By /s/ Ruth E. Honkanen

Thomas J. Lallier (#163041)

Ruth E. Honkanen (#175924)

Attorneys for Movant

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(612) 338-8788

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MEMORANDUM IN SUPPORT
OF MOTION

Capital One Auto Finance ("Movant") submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

FACTS

Movant holds a perfected security interest in a 1998 Oldsmobile, VIN No. 1G3GR62C6W4115959 (the "Vehicle"). The vehicle subject to Movant's security interest is depreciating with use. Debtors are delinquent with respect to payments due under the contract with Movant. Debtors indicated in their bankruptcy schedules their intent to surrender the Vehicle to Movant.

ARGUMENT

Pursuant to Section 362(d)(1) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in property of such [creditor]." 11 U.S.C. Section 362(d)(1). Payments have not been made as required by the contract and Movant has not been provided with adequate protection of its interest in the Vehicle. Such failure constitutes cause, within the meaning of Section 362(d)(1), entitling Movant to relief from the stay. United Savings Assn. of Texas v. Timbers of

Inwood Forest Assoc., Ltd. (In re Timbers of Inwood Assoc., Ltd.), 484 U.S. 365, 108 S.Ct. 626, 98 L.Ed.2d 740 (1988).

Pursuant to Section 362(d)(2) of the Bankruptcy Code, relief from the stay is also appropriate where no equity exists in the subject Vehicle and the Vehicle is not necessary to an effective reorganization. In re Albany Partners, Ltd., 749 F.2d 670 (11th Cir. 1984). The balance due under the Contract does not exceed the fair market value of the Vehicle. Finally, as this a Chapter 7 case, the Vehicle is not necessary to an effective reorganization.

CONCLUSION

For all the reasons set forth herein, Movant is entitled to an order terminating the automatic stay of 11 U.S.C. § 362(a) and authorizing it to take possession of and foreclose its security interest in the Vehicle.

Dated: September 27, 2004.

Respectfully submitted,

FOLEY & MANSFIELD, P.L.L.P.

By /s/ Ruth E. Honkanen

Thomas J. Lallier (#163041)

Ruth E. Honkanen (#175924)

Attorneys for Movant

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#7834 P.009/019

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VERIFICATION

I, MARNIE BAKER, for Capital One Auto Finance, P.O. Box 260848, Plano, TX 75026,

declare, under penalty of perjury, that the foregoing is true and correct to the best of my
knowledge, information and belief.

Executed on: 9-13-04

Signed: Marnie Baker

RETAIL INSTALLMENT CONTRACT AND SECURITY AGREEMENT (CONSUMER CREDIT DOCUMENT)		Lender:	Borrower & Co-Borrower (if applicable):
SSN:	342986754	Capital One, F.S.B.	ARACELI GUERRERO
Application ID:	4002919		MIGUEL A TELLEZ
Contract ID:	6233811	"We" and "us" mean the lender above, its successors and assigns.	"You" and "your" mean each borrower above, and guarantor, jointly and individually.
Date:	8/31/01		

PROMISE TO PAY AND PAYMENT TERMS: You promise to pay us the principal amount of \$19909.00*, plus finance charges accruing on the unpaid balance at the rate of 14.95% per year from the date we receive a signed contract until maturity. Finance charges accrue on a daily basis. After maturity, or after you default and we demand payment, we will earn finance charges on the unpaid balance at 14.95% per year. You agree to pay additional amounts according to the terms and conditions of this contract.

SECURITY: To secure your payment and performance under the terms of this Contract, you give us a security interest in the Vehicle, identified by the Vehicle Identification Number (VIN) entered below, all accessories, attachments, accessories, and equipment placed in or on the Vehicle, together called the Property, and proceeds of the Property. You also assign to us and give us a security interest in proceeds and premium refunds of any insurance and service contracts purchased with this Contract.

TRUTH IN LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE	FINANCE CHARGE *	AMOUNT FINANCED *	TOTAL OF PAYMENTS *
The cost of your credit as a yearly rate.	The dollar amount the credit will cost you.	The amount of your credit provided to you on your behalf.	The amount you will have paid when you have made all scheduled payments.
14.95%	\$8748.00	\$19934.00	\$28682.00

Payment Schedule: Your Payment schedule will be:

Number of Payments	Amount of Payments *	When Payments Are Due
60	\$478.03	Payments due on the 1st day of each month, beginning at least 21 days after receipt of your signed contract.

Security: You are giving a security interest in the Motor Vehicle financed.

Late Charge: If a payment is more than 7 days late, you may be charged 5% of the late amount.

Prepayment: If you pay off this Contract early, you will not have to pay a penalty.

Contract Provisions: You can see the terms of this Contract for any additional information about nonpayment, default, any required repayment before the scheduled date, and prepayment refunds and penalties.

* Please note that your payments are estimates based on the information you provided regarding the amount due to your current lender. If the actual terms differ by more than 5% you will be notified by phone before the contract is officially processed and be given a chance to decline the altered terms.

NOTICE TO BORROWER

Do not sign this agreement before you read it or if it contains any blank spaces. You are entitled to a copy of the contract you sign. Under the law, you have the right to pay off in advance the full amount due and under certain conditions may obtain a partial refund of the finance charge. Keep this contract to protect your legal rights. By signing below borrower agrees to the terms on pages 1 and 2 of this contract and acknowledges receipt of a copy of this contract.

Enter VIN Here: 1A3GR162C6W4115959

ITEMIZATION OF AMOUNT FINANCED

Araceli Guerrero 9-20-01
Signature Date

[Signature] 9-20-01
Signature Date

AMOUNT PAID ON YOUR LOAN ACCOUNT	\$	19909.00
DOCUMENT PROCESSING FEE	\$	25.00
TITLING FEE	\$	0.00
AMOUNT FINANCED	\$	19934.00
FINANCE CHARGE	\$	8748.00
TOTAL OF PAYMENTS	\$	28682.00

Please return by 9/10/01 in order to guarantee acceptance.

EXHIBIT

tabbies

A

MINNESOTA DEPARTMENT OF PUBLIC SAFETY
DRIVER & VEHICLE SERVICES DIVISION
445 MINNESOTA ST., ST. PAUL, MN 55101
CONFIRMATION OF LIEN PERFECTION - DEBTOR NAME AND ADDRESS

GUERRERO ARACELI
TELLEZ MIGUEL ANGEL
1550 CHARLTON STREET #105
WEST ST PAUL MN 55118

98	OLDS	4DAUR	W3190P401
Year	Make	Model	Title NR.
1636R62C6W4115959	05/14/02	NO	
VIN	Security Date	Rebuilt	

RETAIN THIS DOCUMENT - See reverse
side of this form for removing this lien.

First Class
U.S. Postage
PAID

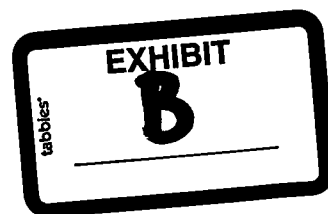
Permit No. 171
St. Paul, MN

FYP130

1ST SECURED PARTY

LIEN HOLDER

CAPITAL ONE FSB
PO BOX 260209
PLANO TX 75026-0209



STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

Jacquelyn J. LaVaque
Foley & Mansfield, P.L.L.P.
250 Marquette Avenue
Suite 1200
Minneapolis, MN 55401

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ORDER FOR RELIEF
FROM STAY

The above-entitled matter came before the Court for hearing on the motion of Capital One Auto Finance ("Movant") seeking relief from the automatic stay of 11 U.S.C. 362(a) of the Bankruptcy Code. Appearances were noted in the Court's record. Based upon the proceedings had on said date, the statements of counsel, and all of the files and records herein, the Court now finds that cause exists entitling Movant to the relief requested.

NOW, THEREFORE, IT IS HEREBY ORDERED that the automatic stay of 11 U.S.C. § 362(a) of the Bankruptcy Code is immediately terminated as to Movant, and Movant is [authorized to enforce its security interest as provided by contract and state law in the subject:](#)

1998 Oldsmobile, VIN No. 1G3GR62C6W4115959

Notwithstanding Fed. R. Bankr. 4001(a)(3), this order is effective immediately.

Dated: _____

Gregory F. Kishel
United States Bankruptcy Judge